WORKMEN'S COMPENSATION

Compensation Award Based on Independent Contractor and Employee Relationship

Arnold contracted with the Youngstown Motor Freight Co. to haul its merchandise and to follow instructions as to how the materials and business transactions were to be handled. He was to receive 66⅔ per cent of the receipts and furnish his own truck, gas, oil, and repair expenses. While assisting in the repair of the truck, taken to the garage under order of the employer, he was hit by a piece of steel, resulting in the loss of his eye. The Industrial Commission refused compensation. Arnold, by virtue of Ohio Gen. Code Sec. 1465-90, sued and obtained a judgment on grounds that he was an employee injured in the course of his employment. Judgment was affirmed on appeal. *Industrial Commission* v. *Arnold*, 20 Ohio Abs. 410 (April 15, 1935).

There is no hard and fast rule by which to determine whether a person is an employee or an independent contractor. The character of the relationship must be determined from all the facts in each case. *Showers* v. *Lund*, 123 Neb. 56, 242 N.W. 258 (1932). Although the courts consider several factors of importance in determining the relationship, they are generally agreed that the dominant test is the right of control over the means, method, and manner of performing the work. Thus, if the employer is interested solely in results, the other contracting party is an independent contractor. Mechem on Agency, Vol. II, 2nd Ed., Sec. 1870; *Fisher Body Co.* v. *Wade*, 45 Ohio App. 263, 187 N.E. 78, 42 A.L.R. 609 (1933); *City of Cincinnati* v. *Stone*, 5 Ohio St. 38 (1855); *Circleville* v. *Neuding*, 41 Ohio St. 465 (1885); *Railroad Co.* v. *Morey*, 47 Ohio St. 207, 24 N.E. 269, 7 L.R.A. 701 (1890); *Industrial Com'n* v. *Doty*, 15 Ohio Abs. 230 (1933). But, when the employer retains control over the details and mode of doing the work, the person is an employee. *Industrial Com. of Ohio* v. *Laird*, 126 Ohio St. 617, 186 N.E. 718 (1933); *Moore* v. *Industrial Commission of Ohio*, 49 Ohio App. 397, 197 N.E. 357 (1934); *Pickens* v. *Diecker*, 21 Ohio St. 212, 8 Am. Rep. 55 (1871); See 21 Ohio Jur. p. 624; *Liprary v. Roch*, 244 App. Div. 858, 279 N.Y.S. 785 (1935).

The following factors have been said to raise the inference of an independent contractor relationship: a distinct occupation or profession, *Industrial Com'n* v. *Doty, supra; Fisher Body Co.* v. *Wade, supra; Auer* v. *Sinclair Ref. Co.*, 103 N.J.L. 372, 137 Atl. 555, 54 A.L.R. 623 (1927); terminability of the relationship without liability, *Snod-*

grass v. *Cleveland Co-op Coal Co.*, 31 Ohio App. 47, 167 N.E. 493 (1929); *Industrial Com.* v. *Bonfils*, 78 Colo. 306, 241 Pac. 735 (1925); privilege of substitution, *Tortorici* v. *Sharp Moosop, Inc., et al.*, 107 Conn. 143, 139 Atl. 642 (1927); payment of a fixed sum per job, *Kruse* v. *Revelson*, 115 Ohio St. 594, 155 N.E. 137 (1927); and the power to hire, pay, and discharge assistants, *Clark* v. *Fry*, 8 Ohio St. 358 (1858); *Liberty Lumber Co.* v. *Silas*, 175 S.E. 265 (Ga. App. 1934).

Courts have generally held the following matters of fact to indicate a relationship of employment: performance of menial tasks, *Carter* v. *W. T. Dyer and Bros.*, 243 N.W. 436 (Minn. 1932); employer's tools and place of employment, *Hawyer* v. *Whalen*, 49 Ohio St. 69, 29 N.E. 1049, 14 L.R.A. 828 (1892); *Ronning et al.* v. *Industrial Com.*, 185 Wis. 384 (1925); *Dewitt* v. *State*, 108 Ohio St. 513, 141 N.E. 551 (1923); and the work as a part of the employer's business, *Ronning et al.* v. *Industrial Com.*, *supra*.

The principle consideration is the right to control and not the fact of control. *Industrial Com. of Ohio* v. *Laird*, *supra*; *Plost* v. *Avondale*, 20 Ohio Abs. 289 (1935). Where the contract is silent as to control of the details, the courts have construed the relationship as one of employment. *Mallinger* v. *Webster City Oil Co.*, 228 N.W. 41 (Iowa, 1929); *Dowery* v. *State*, RD Ind. App. 37, 149 N.E. 922 (1925).

In the light of these decisions, the principal case would seem to be properly decided. WILLIAM CREME.